



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Barrier Construction Company
File: B-224090
Date: September 2, 1986

DIGEST

Protest that agency awarded contract despite timely challenge to awardee's small business size status is dismissed where written confirmation of oral size protest was received by the contracting officer more than 5 days after bid opening and was postmarked later than 1 day after the oral protest.

DECISION

Barrier Construction Company (Barrier) protests the award of a contract under invitation for bids (IFB) No. N62474-86-B-4839, issued by the Navy for maintenance of chain link fence at the Naval Air Facility, El Centro, California. Barrier contends that the contracting officer awarded the contract to the apparent low bidder despite Barrier's timely challenge of the awardee's small business size status.

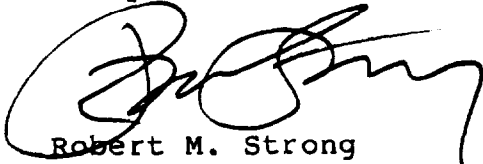
We summarily dismiss the protest without obtaining an agency report from the Navy, since it is clear from information furnished by Barrier that the protest is without legal merit. 4 C.F.R. § 21.3(f) (1986).

According to Barrier, bid opening was August 4, 1986. Barrier states that it notified the contracting officer by telephone on August 6 that it would be submitting detailed information to protest the small business size status of the apparent low bidder. Barrier mailed its written confirmation of its oral protest by certified mail on August 8. The contracting officer awarded the contract to the apparent low bidder on August 11, and received Barrier's letter on August 12. Barrier alleges that the contracting officer awarded the contract in the face of a timely protest made in accordance with Federal Acquisition Regulation (FAR) procedures.

036640

In order to affect a specific solicitation, a protest concerning the small business representation of any bidder must be received by the contracting officer by the close of business of the 5th business day after bid opening. FAR, 48 C.F.R. § 19.302(d)(1) (1985). A protest may be made orally if it is confirmed in writing either within the 5-day period or by letter postmarked no later than 1 day after the oral protest. FAR, 48 C.F.R. § 19.302(d)(1)(i) (1985). Here the Navy did not receive Barrier's confirmation of its size protest until August 12, 6 days after bid opening. Since Barrier also did not mail its confirmation letter until 2 days after its oral protest, its protest was untimely and did not affect the solicitation in question.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel